

TITLE 78 RECODIFICATION - TITLE 78A**CHAPTER 5**

2008 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

Title 78A, Chapter 5, District Court.

Highlighted Provisions:

This bill:

►

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**RENUMBERS AND AMENDS:**

78A-5-101, (Renumbered from 78-3-11.5, as last amended by Laws of Utah 1993,
Chapter 159)

78A-5-102, (Renumbered from 78-3-4, as last amended by Laws of Utah 2004, Chapter
201)

78A-5-103, (Renumbered from 78-3-14.2, as enacted by Laws of Utah 1996, Chapter
198)

78A-5-104, (Renumbered from 78-3-6, as last amended by Laws of Utah 1988, Chapter
248)

78A-5-105, (Renumbered from 78-3-3, as last amended by Laws of Utah 1988, Chapter
248)

78A-5-106, (Renumbered from 78-3-29, as last amended by Laws of Utah 2007,
Chapter 326)

78A-5-107, (Renumbered from 78-3-31, as last amended by Laws of Utah 1995,
Chapter 62)

78A-5-108, (Renumbered from 78-3-30, as enacted by Laws of Utah 1989, Chapter 153)

78A-5-109, (Renumbered from 78-3-12.5, as last amended by Laws of Utah 1997, Chapter 10)

78A-5-110, (Renumbered from 78-3-14.5, as last amended by Laws of Utah 2004, Chapters 273, and 349)

78A-5-111, (Renumbered from 78-3-13.4, as last amended by Laws of Utah 1996, Chapter 198)

78A-5-201, (Renumbered from 78-3-32, as enacted by Laws of Utah 2005, Chapter 159)

78A-5-202, (Renumbered from 78-3-33, as enacted by Laws of Utah 2005, Chapter 159)

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78A-5-101**, which is renumbered from Section 78-3-11.5 is renumbered and amended to read:

CHAPTER 5. DISTRICT COURT

Part 1. General Provisions

~~[78-3-11.5].~~ **78A-5-101. State District Court Administrative System.**

(1) The district court is a trial court of general jurisdiction.

~~[(+)]~~ (2) There is established a State District Court Administrative System. The Judicial Council shall administer the operation of the system.

~~[(2)]~~ (3) In this chapter, "court system" means the State District Court Administrative System.

~~[(3)-The]~~ (4) A district court shall be located in the county seat of each county shall be a location of the district court.

Section 2. Section **78A-5-102**, which is renumbered from Section 78-3-4 is renumbered and amended to read:

~~[78-3-4].~~ **78A-5-102. Jurisdiction -- Appeals.**

(1) The district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law.

(2) The district court judges may issue all extraordinary writs and other writs necessary to carry into effect their orders, judgments, and decrees.

(3) The district court has jurisdiction over matters of lawyer discipline consistent with the rules of the Supreme Court.

(4) The district court has jurisdiction over all matters properly filed in the circuit court prior to July 1, 1996.

(5) The district court has appellate jurisdiction to adjudicate trials de novo of the judgments of the justice court and of the small claims department of the district court.

(6) Appeals from the final orders, judgments, and decrees of the district court are under Sections ~~[78-2-2]~~ 78A-3-102 and ~~[78-2a-3]~~ 78A-4-103.

(7) The district court has jurisdiction to review:

(a) agency adjudicative proceedings as set forth in Title 63, Chapter 46b, Administrative Procedures Act, and shall comply with the requirements of that chapter, in its review of agency adjudicative proceedings; and

(b) municipal administrative proceedings in accordance with Section 10-3-703.7.

(8) Notwithstanding Subsection (1), the district court has subject matter jurisdiction in class B misdemeanors, class C misdemeanors, infractions, and violations of ordinances only if:

(a) there is no justice court with territorial jurisdiction;

~~[(b) the matter was properly filed in the circuit court prior to July 1, 1996;]~~

~~[(c)]~~ (b) the offense occurred within the boundaries of the municipality in which the district courthouse is located and that municipality has not formed a justice court; or

~~[(d)]~~ (c) they are included in an indictment or information covering a single criminal episode alleging the commission of a felony or a class A misdemeanor.

(9) The district court has jurisdiction of actions under Title ~~[78]~~ 78B, Chapter ~~[3h]~~ 7, Child Protective Orders, if the juvenile court transfers the case to the district court.

Section 3. Section **78A-5-103**, which is renumbered from Section 78-3-14.2 is renumbered and amended to read:

~~[78-3-14.2].~~ **78A-5-103. District court case management.**

(1) The district court of each district shall develop systems of case management.

(2) The case management systems developed by a district court shall:

(a) ensure judicial accountability for the just and timely disposition of cases; and

(b) provide for each judge a full judicial work load that accommodates differences in the subject matter or complexity of cases assigned to different judges[;and].

~~[(c) provide that judges of the district court and judges of the court formerly denominated the circuit court who took office prior to July 1, 1991, are entitled to be assigned only cases from the subject matter jurisdiction of their respective courts as that jurisdiction existed on June 30, 1996. If the volume of such cases does not constitute a full work load, other cases shall be assigned.]~~

(3) A district court may establish divisions within the court for the efficient management of different types of cases. The existence of divisions within the court may not:

(a) affect the jurisdiction of the court nor the validity of court orders[. ~~The existence of divisions within the court may not~~]; or

(b) impede public access to the courts.

Section 4. Section **78A-5-104**, which is renumbered from Section 78-3-6 is renumbered and amended to read:

~~[78-3-6].~~ **78A-5-104. Terms -- Minimum of once quarterly.**

Each district court shall hold court at the county seat of each county within the district at least once in each quarter of the year.

Section 5. Section **78A-5-105**, which is renumbered from Section 78-3-3 is renumbered and amended to read:

~~[78-3-3].~~ **78A-5-105. Term of judges -- Vacancy.**

(1) Judges of the district courts shall be appointed initially until the first general election held more than three years after the effective date of the appointment. Thereafter, the term of office for judges of the district courts is six years, and commences on the first Monday in January, next following the date of election.

(2) A judge whose term expires may serve, upon request of the Judicial Council, until a successor is appointed and qualified.

Section 6. Section **78A-5-106**, which is renumbered from Section 78-3-29 is renumbered and amended to read:

~~[78-3-29].~~ **78A-5-106. Presiding judge -- Associate presiding judge -- Election -- Term -- Compensation -- Powers -- Duties.**

(1) In judicial districts having more than one judge, the district court judges shall elect

125 one judge of the district to the office of presiding judge.

126 (2) In judicial districts having more than two judges, the district court judges may elect
127 one judge of the district to the office of associate presiding judge.

128 (3) In districts having five or more full-time judges, court commissioners, referees, or
129 hearing officers, the presiding judge shall receive an additional \$2,000 per annum as
130 compensation.

131 (4) In districts having ten or more full-time judges, court commissioners, referees, or
132 hearing officers, the associate presiding judge shall receive an additional \$2,000 per annum as
133 compensation.

134 (5) The presiding judge has the following authority and responsibilities, consistent with
135 the policies of the Judicial Council:

136 (a) implementing policies of the Judicial Council; and

137 (b) exercising powers and performing administrative duties as authorized by the
138 Judicial Council.

139 (6) When the presiding judge is unavailable, the associate presiding judge shall assume
140 the responsibilities of the presiding judge. The associate presiding judge shall perform other
141 duties assigned by the presiding judge.

142 Section 7. Section **78A-5-107**, which is renumbered from Section 78-3-31 is
143 renumbered and amended to read:

144 **~~[78-3-31].~~ 78A-5-107. Court commissioners -- Qualifications -- Appointment --**
145 **Functions governed by rule.**

146 (1) (a) Court commissioners are quasi-judicial officers of courts of record and have
147 limited judicial authority as provided by this section and rules of the Judicial Council.

148 (b) Court commissioners serve full-time and are subject to the restrictions of Section
149 ~~[78-7-2]~~ 78A-2-222, which prohibits the practice of law.

150 (2) (a) The Judicial Council shall appoint court commissioners with the concurrence of
151 a majority of the judges of trial courts in the district the court commissioner primarily serves.

152 (b) The Judicial Council may assign court commissioners appointed under this section
153 to serve in one or more judicial districts.

154 (3) A person appointed as a court commissioner shall have the following
155 qualifications:

156 (a) be 25 years of age or older;
157 (b) be a citizen of the United States;
158 (c) be a resident of this state while serving as court commissioner;
159 (d) be admitted to the practice of law in this state; and
160 (e) possess ability and experience in the areas of law in which the commissioner will
161 be serving.

162 (4) A court commissioner shall take and subscribe to the oath of office as required by
163 Article IV, Sec. 10, Utah Constitution, prior to assuming the duties of the office.

164 (5) Court commissioners shall:

165 (a) comply with applicable constitutional and statutory provisions, court rules and
166 procedures, and rules of the Judicial Council;

167 (b) comply with the Code of Judicial Conduct to the same extent as full-time judges;
168 and

169 (c) successfully complete orientation and education programs as required by the
170 Judicial Council.

171 (6) The presiding judge of the district the commissioner primarily serves:

172 (a) shall develop a performance plan for the court commissioner and annually conduct
173 an evaluation of the commissioner's performance, and shall provide the plan and evaluations to
174 the Judicial Council upon request; and

175 (b) is responsible for the day-to-day supervision of the court commissioner.

176 (7) The Judicial Council shall:

177 (a) establish by rule procedures for the investigation and review of complaints and the
178 discipline and removal of court commissioners; and

179 (b) evaluate court commissioners under the requirements of Subsection [~~78-3-21(4)~~]
180 78A-2-104(5).

181 (8) The Judicial Council shall make uniform statewide rules defining the duties and
182 authority of court commissioners for each level of court they serve. The rules shall not exceed
183 constitutional limitations upon the delegation of judicial authority. The rules shall at a
184 minimum establish:

185 (a) types of cases and matters commissioners may hear;

186 (b) types of orders commissioners may recommend;

(c) types of relief commissioners may recommend; and

(d) procedure for timely judicial review of recommendations and orders made by court commissioners.

Section 8. Section **78A-5-108**, which is renumbered from Section 78-3-30 is renumbered and amended to read:

~~[78-3-30].~~ 78A-5-108. Duties of the clerk of the district court.

The clerk of the district court shall:

(1) take charge of and safely keep the court seal;

(2) take charge of and safely keep or dispose of all books, papers, and records filed or deposited with the clerk, and all other records required by law or the rules of the Judicial Council;

(3) issue all notices, processes, and summonses as authorized by law;

(4) keep a record of all proceedings, actions, orders, judgments, and decrees of the court;

(5) take and certify acknowledgments and administer oaths;

(6) supervise the deputy clerks as required to perform the duties of the clerk's office; and

(7) perform other duties as required by the presiding judge, the court executive, applicable law, and the rules of the Judicial Council.

Section 9. Section **78A-5-109**, which is renumbered from Section 78-3-12.5 is renumbered and amended to read:

~~[78-3-12.5].~~ 78A-5-109. Costs of system.

(1) The cost of salaries, travel, and training required for the discharge of the duties of district court judges, court commissioners, secretaries of judges or court executives, court executives, and court reporters shall be paid from appropriations made by the Legislature.

(2) Except as provided in Subsection (1), the Judicial Council may directly provide for the actual and necessary expenses of operation of the district court, including personnel salary and benefits, travel, training, facilities, security, equipment, furniture, supplies, legal reference materials, and other operating expenses, or may contract with the county in a county seat or with the unit of local government in municipalities other than a county seat for the actual and necessary expenses of the district court. Any necessary contract with the county or unit of local

218 government shall be pursuant to Subsection ~~[78-3-13.4]~~ 78A-5-111(4).

219 Section 10. Section **78A-5-110**, which is renumbered from Section 78-3-14.5 is
220 renumbered and amended to read:

221 ~~[78-3-14.5]~~. **78A-5-110. Allocation of district court fees and forfeitures.**

222 (1) Except as provided in this section, district court fines and forfeitures collected for
223 violation of state statutes shall be paid to the state treasurer.

224 (2) Fines and forfeitures collected by the court for violation of a state statute or county
225 or municipal ordinance constituting a misdemeanor or an infraction shall be remitted 1/2 to the
226 state treasurer and 1/2 to the treasurer of the state or local governmental entity which
227 prosecutes or which would prosecute the violation.

228 (3) Fines and forfeitures collected for violations of Title 23, Wildlife Resources Code
229 of Utah, Title 41, Chapter 22, Off-highway Vehicles, or Title 73, Chapter 18, State Boating
230 Act, shall be paid to the state treasurer.

231 (a) For violations of Title 23, the state treasurer shall allocate 85% to the Division of
232 Wildlife Resources and 15% to the General Fund.

233 (b) For violations of Title 41, Chapter 22, or Title 73, Chapter 18, the state treasurer
234 shall allocate 85% to the Division of Parks and Recreation and 15% to the General Fund.

235 (4) Fines and forfeitures collected for violation of Section 72-7-404 or 72-7-406, less
236 fees established by the Judicial Council, shall be paid to the state treasurer for deposit in the B
237 and C road account. Fees established by the Judicial Council shall be deposited in the state
238 General Fund. Money deposited in the class B and C road account is supplemental to the
239 money appropriated under Section 72-2-107 but shall be expended in the same manner as other
240 class B and C road funds.

241 (5) Until July 1, 2007, fines and forfeitures collected by the court for a violation of
242 Subsection 41-1a-1303(2) related to registration of vehicles after establishing residency shall
243 be remitted:

244 (a) 50% to the state or local governmental entity which issued the citation for a
245 violation to be used for law enforcement purposes; and

246 (b) 50% in accordance with Subsection (2).

247 (6) Fines and forfeitures collected for any violations not specified in this chapter or
248 otherwise provided for by law shall be paid to the state treasurer.

(7) Fees collected in connection with civil actions filed in the district court shall be paid to the state treasurer.

(8) The court shall remit money collected in accordance with Title 51, Chapter 7, State Money Management Act.

Section 11. Section **78A-5-111**, which is renumbered from Section 78-3-13.4 is renumbered and amended to read:

~~[78-3-13.4].~~ 78A-5-111. Transfer of court operating responsibilities -- Facilities -- Staff -- Budget.

(1) A county's determination to transfer responsibility for operation of the district court to the state is irrevocable.

(2) (a) Court space suitable for the conduct of judicial business as specified by the Judicial Council shall be provided by the state from appropriations made by the Legislature for these purposes.

(b) The state may, in order to carry out its obligation to provide these facilities, lease space from a county, or reimburse a county for the number of square feet used by the district. Any lease and reimbursement shall be determined in accordance with the standards of the State Building Board applicable to state agencies generally. A county or municipality terminating a lease with the court shall provide written notice to the Judicial Council at least one year prior to the effective date of the termination.

(c) District courts shall be located in municipalities that are sites for the district court or circuit court as of January 1, 1994. Removal of the district court from the municipality shall require prior legislative approval by joint resolution.

(3) The state shall provide legal reference materials for all district judges' chambers and courtrooms, as required by Judicial Council rule. Maintenance of county law libraries shall be in consultation with the court executive of the district court.

(4) (a) At the request of the Judicial Council, the county or municipality shall provide staff for the district court in county seats or municipalities under contract with the administrative office of the courts.

(b) Payment for necessary expenses shall be by a contract entered into annually between the state and the county or municipality, which shall specifically state the agreed costs of personnel, supplies, and services, as well as the method and terms of payment.

(c) Workload measures prepared by the state court administrator and projected costs for the next fiscal year shall be considered in the negotiation of contracts.

(d) Each May 1 preceding the general session of the Legislature, the county or municipality shall submit a budget request to the Judicial Council, the governor, and the legislative fiscal analyst for services to be rendered as part of the contract under Subsection (b) for the fiscal year immediately following the legislative session. The Judicial Council shall consider this information in developing its budget request. The legislative fiscal analyst shall provide the Legislature with the county's or municipality's original estimate of expenses. By June 15 preceding the state's fiscal year, the county and the state court administrator shall negotiate a contract to cover expenses in accordance with the appropriation approved by the Legislature. The contracts may not include payments for expenses of service of process, indigent defense costs, or other costs or expenses provided by law as an obligation of the county or municipality.

Section 12. Section **78A-5-201**, which is renumbered from Section 78-3-32 is renumbered and amended to read:

Part 2. Drug Court

[78-3-32]. 78A-5-201. Creation and expansion of existing drug court programs
-- Definition of drug court program -- Criteria for participation in drug court programs
-- Reporting requirements.

(1) There may be created a drug court program in any judicial district that demonstrates:

(a) the need for a drug court program; and
(b) the existence of a collaborative strategy between the court, prosecutors, defense counsel, corrections, and substance abuse treatment services to reduce substance abuse by offenders.

(2) The collaborative strategy in each drug court program shall:
(a) include monitoring and evaluation components to measure program effectiveness;
and
(b) be submitted to, for the purpose of coordinating the disbursement of funding, the:
(i) executive director of the Department of Human Services;
(ii) executive director of the Department of Corrections; and

(iii) state court administrator.

(3) (a) Funds disbursed to a drug court program shall be allocated as follows:

(i) 87% to the Department of Human Services for testing, treatment, and case management; and

(ii) 13% to the Administrative Office of the Courts for increased judicial and court support costs.

(b) This provision does not apply to Federal Block Grant funds.

(4) A drug court program shall include continuous judicial supervision using a cooperative approach with prosecutors, defense counsel, corrections, substance abuse treatment services, juvenile court probation, and the Division of Child and Family Services as appropriate to promote public safety, protect participants' due process rights, and integrate substance abuse treatment with justice system case processing.

(5) Screening criteria for participation in a drug court program shall include:

(a) a plea to, conviction of, or adjudication for a nonviolent drug offense or drug-related offense;

(b) an agreement to frequent alcohol and other drug testing;

(c) participation in one or more substance abuse treatment programs; and

(d) an agreement to submit to sanctions for noncompliance with drug court program requirements.

Section 13. Section **78A-5-202**, which is renumbered from Section 78-3-33 is renumbered and amended to read:

[78-3-33]. 78A-5-202. Creation of Drug Board Pilot Project -- Definition of Drug Board Pilot Project -- Criteria for parolee participation in the Drug Board Pilot Project -- Reporting requirements.

(1) There may be created a Drug Board Pilot Project in Davis and Weber counties that includes intensive substance abuse treatment, frequent drug testing, and other additional conditions of parole, with the expectation that the offender will be required to complete the substance abuse treatment, remain drug free, and meet all other conditions of parole.

(2) Screening criteria for parolee participation in the Drug Board Pilot Project shall:

(a) be determined by the Board of Pardons and Parole and the Department of Corrections; and

342 (b) include parolees who are facing an eminent return to prison due to substance abuse.